

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 665 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
- No

PRITAMSING S NARANG

Versus

MUKESH JAMANADAS SHAH

Appearance:

MR GC RAY for Petitioner

MR DARSHAN M PARIKH for Respondent No. 1

MR SR DIVETIA, APP for Respondent No. 2

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 23/10/96

ORAL JUDGEMENT

Mr. Ray for the petitioner is not present when called out. Mr. Parikh for the respondent No.1/original complainant is present. Mr. Diveita, learned A.P.P. for respondent No.2-State is present.

This matter was taken up on 18.10.1996 but on that day also Mr. Ray was not present. Today the matter was called out at the beginning of the sitting. However, Mr. Ray did not remain present and, therefore, the matter was kept back at the request of Mr. Parikh and is again taken up after some time.

From the record, it appears that the petitioner/original accused agreed to make payment to respondent No.1 under an agreement of sale of a vehicle bearing Registration No. GQA 874. The respondent No.1/original complainant had agreed to sell this vehicle to the petitioner/accused for a consideration of Rs.3,90,000/- The agreement is annexed as Annexure A to the petition which clearly shows that at the time of executing the agreement a sum of Rs.1,00,000/- was paid by the petitioner to respondent No.1 and balance of Rs.2,90,000/- was to be paid in instalments for which postdated cheques were given as referred to therein. Thus the cheques in question are admittedly given for valid consideration. If any negotiable instrument given for valid consideration when presented for encashment is dishonoured the drawer of the negotiable instrument would be liable to be prosecuted under Section 138 of the Negotiable Instruments Act. In this case also a cheque for Rs.50,000/- dated 21.6.1990 bearing No.463063 drawn on Punjab & Sind Bank was given by the petitioner to respondent No.1 towards sale consideration of the vehicle referred to in the agreement and the same has been returned dishonoured when presented for encashment. Thus, on the face of it the petitioner has committed an offence under Section 138 of the Negotiable Instruments Act. Consequently, the respondent No.1 has a right to initiate criminal proceedings in accordance with law. It is not the case of the petitioner that before the cheque in question was presented to the banker for encashment any notice was given calling upon the drawee not to present the cheque for some valid reasons. Had that been the situation, one can say that the petitioner had valid reason for requesting for stop-payment of the cheque. But even to take that recourse it is obligatory on the part of the drawer of the cheque to maintain balance to the extent of the amount to which the cheque is drawn. On this point, Mr. Parikh has relied upon the judgment of the Supreme Court in the case of Electronics Trade & Technology Development Corpn. Ltd. v. Indian Technologists & Engineers (Electronics) (P) Ltd., (1996) 2, SCC 739. Thus, in absence of any notice by drawer preceding the event of depositing the cheque in bank, a presumption can be raised that the cheque was given for dishonest intention so as to bring the case within the ambit of

Section 138 of the Negotiable Instruments Act. Thus, on the face of it, the allegations made in the complaint constitute a criminal offence and proceedings initiated cannot be termed as abuse of process of Court. Consequently, it will be hazardous to invoke inherent jurisdiction and quash the proceedings as would amount to depriving the trial court from appreciating the facts and evidence to arrive at just conclusion. In my view, if under the circumstances referred to above, any aggrieved party has taken recourse to criminal proceedings such an act cannot be said to be an abuse of process of court. If the alleged act prima facie discloses commission of an offence, in my opinion, the cognizance would be absolutely legal and in accordance with law and cannot be quashed and set aside under Section 482 of the Criminal Procedure Code.

In the result, the application is not maintainable and deserves to be dismissed and is hereby dismissed. Rule is discharged. Ad interim relief stands vacated.